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October 9, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Ex Parte: **Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers – CC Docket No. 01-338; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 - CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability – CC Docket No. 98-147**

Dear Ms. Dortch:

On October 8, 2002, Dee May, Ed Shakin, Augie Trinchese, and the undersigned met with Rob Tanner, Jeremy Miller, Claudia Pabo, Ian Dillner, Julie Veach, and Mike Engel of the Wireline Competition Bureau and Shanti Gupta and Jerry Stanshine of the Office of Engineering and Technology. The purpose of the meeting was to discuss how the market for special access services is subject to significant competition and that CLECs are clearly not impaired in their ability to provide services to business markets without the use of unbundled high capacity loops and dedicated transport. The attached material was used in the meeting.

Please associate this notification with the record in the proceedings indicated above. If you have any questions regarding this matter, please call me at (202) 515-2530.

Sincerely,

W. Scott Randolph

Attachment

cc: Rob Tanner
Jeremy Miller
Claudia Pabo
Ian Dillner
Julie Veach
Mike Engel
Shanti Gupta
Jerry Stanshine

UNE Triennial Review

High Capacity Loops and Transport

October 8, 2002

CLECs don't rely on UNEs

✓ Although CLECs target business customers, they are not using UNEs to do so.

Table 2. Use of High-Capacity Loop UNEs

	High-Capacity Loops Purchased by CLECs					
	DS-1		DS-3		OC-3 or Higher	
	Total	% of all loops	Total	% of all loops	Total	% of all loops
Verizon	12,300	1%	60	0.005%	0	0%
SBC*	36,500	2%	70	0.004%	0	0%
BellSouth	18,600	4%	10	0.003%	0	0%
Qwest	4,700	2%	0	0%	0	0%
Total	**72,000**	**2%**	**140**	**0.004%**	**0**	**0%**

*Does not include Connecticut.

Special access is a competitive alternative

- ✓ Special access competition is so robust that the Commission has granted pricing flexibility in MSAs that account for a significant majority of special access demand - indeed 2/3 of all of the special access services in Verizon's territory.
- ✓ Special Access prices are so low that certain discounts were challenged as predatory.

The impairment analysis

- ✓ Impairment may be addresses through looking at various aspects of the market:
  - ➤ Customer
  - ➤ Service
  - ➤ Geography
- ✓ The Commission can use all of these tools in evaluating the level of competition for dedicated business services.

The Enterprise Business Market

- ✓ **There is no impairment to serve enterprise business customers.**
- ✓ **The Enterprise Business market is characterized by:**
  - ➤ Largest businesses that typically operate multiple locations nationally.
  - ➤ Spend over a hundred thousand dollars annually on telecommunications.
  - ➤ Employ their own telecom managers and consultants,.
  - ➤ Generate sufficient concentrated demand to warrant deployment of competing facilities.
  - ➤ Generally rely on their own facilities, special access from ILECs or other providers.

Largest IXCs control the market

- ✓ **The major long-distance carriers control a significant portion of the national market for services provided to enterprise customers.**
- ✓ **Competing carriers will typically accommodate enterprise customers by providing a broad range of services that meet all of the customer's telecommunications needs.**
  - ➤ As David Willis, an analyst at the Meta Group in Stamford, Conn., agrees, "AT&T should win 60 percent of the contracts that come up," he said of customers whose WorldCom contracts are expiring. "Sprint should win 20 percent and the regional bells perhaps another 20 percent." (New York Times, 09/01/2002)
  - ➤ As WorldCom's Chief Marketing Officer has explained, "Bell companies don't present a major threat to WorldCom, Inc.'s business service group … [they] don't have the products, systems, or sales forces to attack the middle and high-end segments of the business-service market."

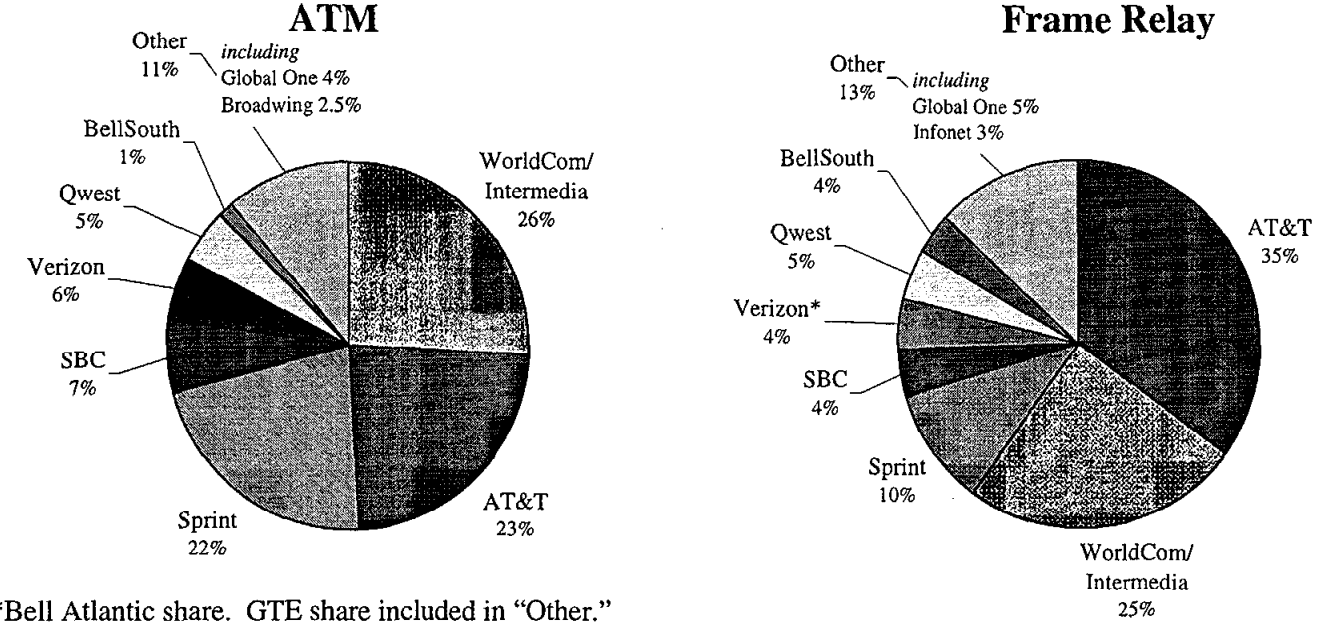
DS3 (and higher) Services

- ✓ There is also no impairment to serve high capacity DS3 (and higher) customers, for loops or transport.
- ✓ DS3 services are used by customers that generate very large traffic volumes and for which it is economic for a carrier to build facilities to reach them.
- ✓ CLEC compete without DS3 UNEs today -- less than 150 DS3 or higher UNE loops sold.

Large Business Broadband Market

- ✓ **Likewise, there is no basis for unbundling network elements to serve the large business broadband market.**
- ✓ **The major IXCs already control the national market for ATM and frame relay services.**

Figure 5. Market Share of Nationwide ATM and Frame Relay Revenues



*Bell Atlantic share. GTE share included in "Other."

Source: R. Kaplan, IDC, *U.S. Packet/Cell-Based Services Market Forecast and Analysis, 2000-2005* at Figures 9 & 31 (2001).

The DS1 General Business Market

- ✓ **CLECs are generally not impaired in providing DS1 loop and transport services to businesses.**
- ✓ **The DS1 business market is also characterized by significant competition.**
  - ➤ Sophisticated, high-volume users with concentrated demand.
- ✓ **Competitive carriers serve these customers using:**
  - ➤ Their own high capacity loop and transport facilities,
    - Essentially the same type of facilities used to provide special access services.
  - ➤ Competitively-priced ILEC special access services
    - Can take advantage of discounted volume and term or contract pricing plans.

CLECs use a combination of special access and their own facilities

- ✓ CLECs use their own last-mile facilities to serve the vast majority of their business customers.
- ✓ In fact, CLECs have captured a third of the special access market provide over 150M voice grade equivalent circuits.

CLECs serve using their own loops

- ✓ **Marketplace evidence shows substantial deployment of alternative high-capacity loop facilities wherever there is likely to be demand for those services.**
- ✓ **CLECs already connect to some 175,000 commercial office buildings, and their fiber networks are so pervasive that both CLECs and wholesale fiber suppliers tout their willingness to extend their networks to new buildings as needed.**
  - ➤ KMC says that it has fiber that passes within 1200 feet of nearly 97,000 office buildings.
  - ➤ XO has revealed that, in the preceding 12 months, the company added almost 14,000 route miles (a 155% increase) and expanded from 1761 to 2346 on-net buildings (a 33% increase).
- ✓ **The Smart Buildings Policy Project, a coalition that includes AT&T, WorldCom, CompTel, ALTS, and other CLECs, has stated that CLECs serve buildings housing one-third of the 60 million business access lines in the country.**

CLECs extend their networks to connect

- ✓ WorldCom's Technical Officer has stated that, with technological advancements, "you can afford to extend your local footprint" and that "[a] lot of what we do today is simply extend the capability we may already have in an existing metro market.

- ✓ XO similarly asserts that it "use [s] a variety of technologies to connect our customers directly to our networks, ... [and] can connect a high percentage of the area's commercial buildings using these technologies, rather than connections leased from third parties.

- ✓ Time Warner Telecom recently told the SEC that it "continues to extend its network in its present markets in order to reach additional commercial buildings with its fiber facilities.

CLECs are using their own fiber networks

- ✓ CLECs have deployed over 184,000 fiber route miles.
- ✓ The top 100 MSAs are served by a variety of CLEC networks.

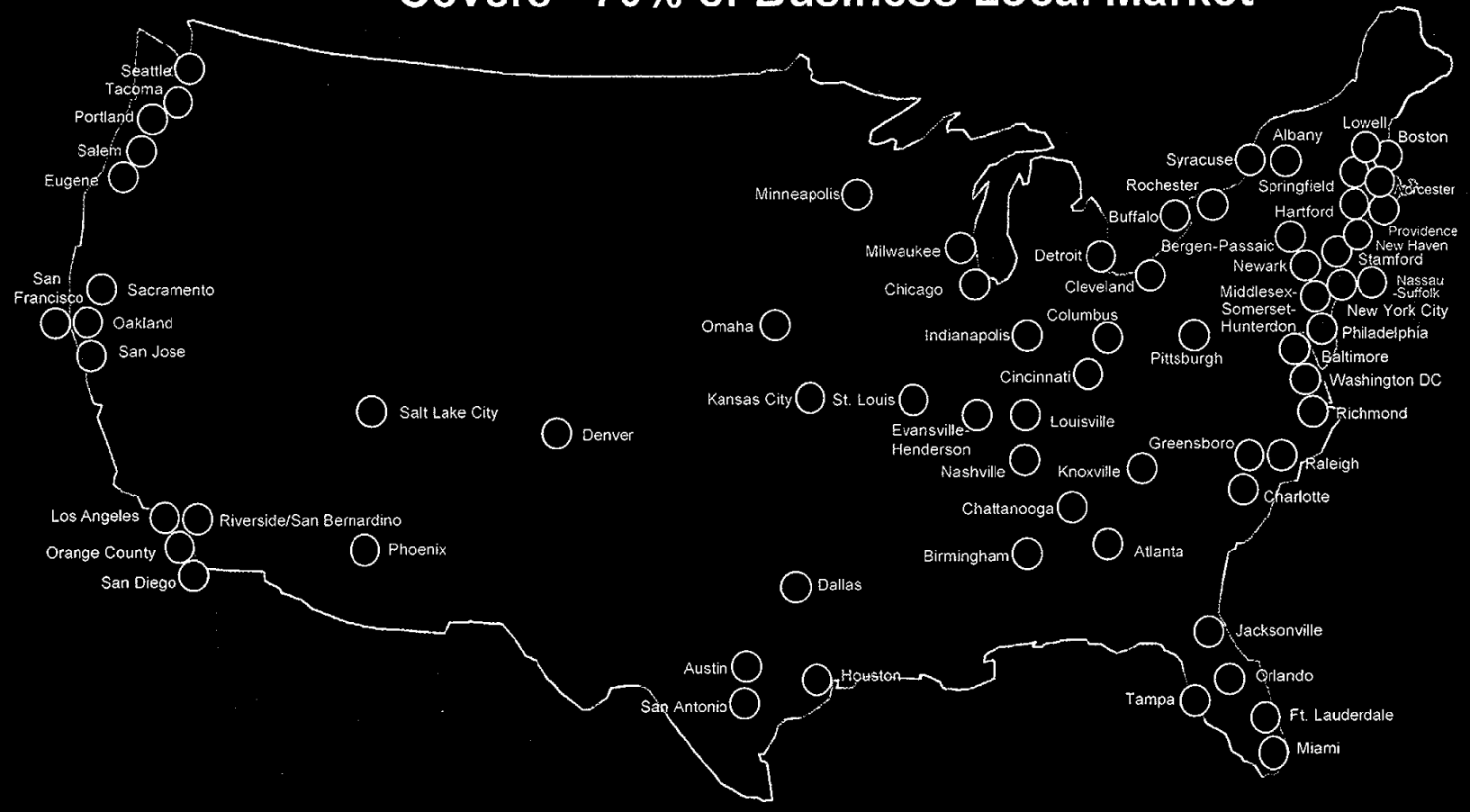
Table 4. Average Number of CLEC Networks by MSA

MSA Rank	1998	2001	Percentage Increase
1-25	19.6	32.2	64%
26-50	10.2	15.0	47%
51-75	5.2	9.0	73%
76-100	4.0	6.6	65%
101-125	2.8	4.8	71%
126-150	2.8	3.4	21%

Sources: See Appendix M.

Scaling the Growth Businesses
Business Local Services

- Presence in 90 Cities in 68 MSAs
- Covers ~70% of Business Local Market



Fiber based collocation is widespread

- ✓ CLECs have obtained fiber-based collocation in wire centers within the top 25 MSAs accounting for 61% of all BOC access lines.
- ✓ Much higher for dedicated services to business customers - 80% of Verizon's special access demand is concentrated in 20% of our wire centers.

Competitive Interoffice Transport - 25 Largest MSAs

	Percentage of Wire Centers and Access Lines Served by:			
	1 or more fiber-based CLEC collocation nodes		2 or more	
	% Lines	% WCs	% Lines	% WCs
Verizon	58	35	36	16
SBC	61	35	37	18
BellSouth	69	37	57	27
Qwest	60	32	38	19
Total	**61**	**35**	**40**	**19**

Transport alternatives are available

- ✓ A Web-based trading site includes over 35 fiber wholesalers listing over 10,000 local route miles of fiber in more than 60 cities in 23 states *(Find Fiber and Facilities Fast,* www.fiberloops.com*).*
- ✓ Utility companies, which control some 35% of the nation's fiber infrastructure, are an additional, substantial source of interoffice transport and dark fiber (accounting for roughly half of all new metropolitan fiber networks).
- ✓ Long distance carriers are also leasing dark fiber on their local fiber networks to CLECs.

CLECs admit they are not impaired

- ✓ **Covad admits that it obtains 50% of its transport from competitive carriers.**
- ✓ **Conversent acknowledges that it purchases dedicated transport and dark fiber from three competitive providers, and that it "can and does" self-provision dark fiber.**
- ✓ **AT&T reports that it has over 18,000 fiber route miles and is collocated in over 1000 ILEC end offices (not counting the large number of additional collocations it acquired from NorthPoint).**
- ✓ **XO has over 22,200 route miles, and Time Warner Telcom's network contains over 16,800 route miles.**
- ✓ **AT&T itself admits there are competitive alternatives:**
  - ➤ "Verizon has numerous options for getting its traffic to a POI located adjacent to AT&T's switch. For example, Verizon can use its existing facilities, it can lease facilities from a third party or it can deliver traffic to AT&T's collocated space and use AT&T's facilities to reach its POI." AT&T submission, Virginia Arbitration

Roadmap to facilities-based competition

- ✓ **High Capacity Loops and dedicated Transport facilities for DS-1 service (including dark fiber) should not be unbundled in any area where the Commission has granted pricing flexibly.**
  - ➤ As the DC Circuit confirmed, the FCC's pricing flexibility tests are a good measure of the presence of competitive alternatives.
- ✓ **In areas where pricing flexibility has not been granted, unbundling of high capacity loops and transport should not be required where:**
  - ➤ For transport, there are two or more collocated facilities-based competitors in wire centers on either of the end points of the circuit
  - ➤ For loop facilties, there are two or more collocated facilities-based competitors in a wire center, or where a given customer or another customer at the same location is already being served by special access.

Roadmap to facilities-based competition

- ✓ In remaining areas, DS-1 facilities should be presumptively unavailable but the Commission should allow transport unbundling for DS-1 services on a transitional basis when the carrier shows certain criteria are met.

- ✓ All unbundling including on a limited transitional basis, needs to "sunset" in order to preserve incentive to deploy competing facilities.

A uniform national policy is needed

- ✓ **A uniform national policy is necessary to create incentives for investment and promotion of truly competitive markets.**

- ✓ **Sec.251(d) appoints the FCC as the regulatory body that must make the determination of a limiting standard to determine what elements should be unbundled.**
  - ➤ Under the Act, the FCC must make clear that further state unbundling is not "consistent with the requirements" of that section.